Ramatex Textiles Industrial Sdn Bhd v Menteri Sumber Manusia, Malaysia & Anor

HIGH COURT (KUALA LUMPUR) — APPLICATION FOR JUDICIAL REVIEW NO R1-25-40 OF 2001

RAUS SHARIF J

3 AUGUST 2004

Administrative Law — Remedies — Certiorari — Trade union — Recognition — Minister's decision to accord recognition to union — Membership check — Whether was failure to consider suitability — Whether minister under duty to provide reasons for decision — Director-General of Trade Unions — Discretion — Decision to conduct membership check by way of verification — Whether exercised reasonably

Labour Law — Trade union — Recognition — Membership check — By way of verification — Whether contravenes arts 5, 8 and 10 of Federal Constitution — Whether invalid under art 4 of Federal Constitution — Director-General of Trade Unions — Discretion — Decision to conduct membership check by way of verification — Whether exercised reasonably

This was an application by the applicant for a certiorari to quash the Minister's decision in directing the applicant to recognise its union. The grounds advanced were that (i) the Minister had committed an error of law and failed to consider a membership check by way of verification exercise was not suitable in the circumstances of the matter and the Director General of Trade Unions ('the DGTU') should have resorted to the membership check by way of secret ballot under the Trade Union Regulations 1959; and (ii) the minister acted in breach of procedural fairness when he failed to provide any reasons to support his decision.

Held, dismissing the application:

(1) In seeking to be accorded recognition, a trade union must prove, among other things, that it has sufficient members to represent the employees. This is ascertained by way of a membership check, in the form of a secret ballot and a verification check (see para 10).

(2) The DGTU had informed the applicant that a membership verification exercise would be conducted but the applicant failed to object to it then. Thus, the minister cannot be faulted when he decided to adopt the recommendations of the Director General of Industrial Relations ('DGIR') and the Director General of Trade Unions ('DGTU') who had carried out the membership check by verification exercise. Furthermore, the applicant had not proven that the DGIR, the DGTU or the Minister had acted outside the scope of the power conferred by the Trade Unions Act 1959 and the rules made thereunder (see paras 13 and 15).

(3) The minister is under no duty to give reasons when making his decision and therefore this could not be a reason for its nullification (see para 20).

[**Bahasa Malaysia summary**

Ini adalah permohonan pemohon untuk perintah certiorari bagi membatalkan ketetapan menteri memerintahkannya mengikhtirafkan kewujudan kesatuan sekerjanya. Alasan-alasan yang dimajukan olehnya adalah (i) bahawa menteri telah khilaf di sisi undang-undang dan gagal mengambil-kira yang penilaian keahlian melalui proses penentusahan tidak sesuai dalam keadaan semasa dan ketua pengarah kesatuan sekerja (KPKS) sepatutnya membuat penilaian keahlian melalui undi rahsia di bawah Peraturan-peraturan Kesatuan Sekerja 1959; dan (ii) menteri telah melanggar keadilan prosedur bila dia gagal memberi sebab-sebab yang menyokong keputusannya.

Diputuskan, menolak permohonan tersebut:

(1) Dalam memohon untuk pengikhtirafan, kesatuan sekerja mesti membuktikan, antara lain, bahawa ia mempunyai ahli yang mencukupi untuk mewakili pekerja. Ini diputuskan melalui penilaian keahlian, dalam bentuk undi rahsia dan penentusahan (lihat perenggan 10).

(2) KTKS telah memaklumkan kepada pemohon bahawa penentusahan keahlian akan dikendalikan, akan tetapi pemohon gagal membuat bantah pada masa tersebut. Maka, menteri tidak boleh dipersalahkan bilamana beliau menerimapakai cadangan ketua pengarah perhubungan perusahaan (KPPP) dan KPKS yang telah melaksanakan penilaian keahlian melalui penentusahan. Tambahan pula, pemohon gagal membuktikan bahawa KPPP, KPKS dan menteri telah bertindak di luar bidangkuasa yang diperuntukkan di bawah Akta Kesatuan Sekerja dan perintah-perintah yang dibuat di bawahnya (lihat perenggan 13 dan 15).

(3) Tugas Menteri tidak memerlukannya untuk memberi alasan bila membuat keputusan dan dengan itu tidak boleh diterima sebagai alasan untuk pembatalannya (lihat perenggan 20).]

Notes

For cases on certiorari generally, see 1 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 185–393

For cases on locus standi, see 2(3) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 4276–4285

For cases on recognition of trade unions, see 8(1) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 1502–1520

Cases referred to

Hong Leong Equipment Sdn Bhd v Liew Fook Chuan and another appeal [1996] 1 MLJ 481 (refd)

Joseph Puspam v Menteri Sumber Manusia, Malaysia & Anor [2001] 4 AMR 4181 (folld)

Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-Sama Serbaguna Sungai Gelugor dengan Tanggungan [1999] 3 MLJ 1 (refd)
Menteri Sumber Manusia v Association of Bank Officers Peninsular Malaysia [1999] 2 MLJ 337 (refd)
Minister of Human Resources & Ors v National Union of Hotel, Bar & Restaurant Workers, Semenanjung Malaysia & another appeal [1997] 3 MLJ 377 (refd)
Rohana bte Ariffin & Anor v Universiti Sains Malaysia [1989] 1 MLJ 487 (refd)
Senja (M) Sdn Bhd v Minister of Human Resources & Anor (OM No 25-92-2001) (dist)

Legislation referred to

Federal Constitution arts 4, 5, 8, 10
Industrial Relations Act 1967 s 9(2), (5)
Industrial Relations Regulations 1980 reg 4(1)(c)
Trade Unions Regulations 1959 regs 62, 63, 65(1)

Raymond TC Low (Shearn Delamore & Co) for the appellant
Aslam Zainuddin (Jabatan Peguam Negara Malaysia) for the first respondent
S Muhendaran (Muhendaran Sri) for the second respondent

Raus Sharif J:

[1] In this application, the applicant moves this court for the following relief:

(i) an order of certiorari to quash the decision of the first respondent ('the Minister') made under s 9(5) of the Industrial Relations Act 1967 on 7 March 2001 which directed the applicant to recognise the second respondent; and

(ii) an order of declaration that regs 62, 63 and 65(1) of the Trade Union Regulations 1959 which provide for a membership check by way of verification are ultra vires and repugnant to arts 5, 8 and 10 of the Federal Constitution and therefore, unconstitutional and invalid by virtue of art 4 of the Federal Constitution.

[2] The material facts which led to this application by the applicant are as follows.

[3] On 18 March, 2000, by way of a letter to the applicant, the second respondent ('the union') made a claim for recognition ('the recognition claim') over the applicant's employees within the scope of its representation pursuant to s 9(2) of the Industrial Relations Act 1967 ('the IRA').

[4] On 3 April, 2000, the applicant informed the union that it would be unable to consider the union's claim for recognition. A month later, the applicant was notified by the Director General of Industrial Relations ('DGIR') that the necessary steps had proceeded under s 9(4A) of the IRA to resolve the issue of the recognition claim.

[5] The DGIR then notified the Director General of Trade Unions ('DGTU') of the recognition claim and sought his assistance to conduct a membership check. The aforesaid request was pursuant to reg 4(1)(c) of the Industrial Relations Regulations 1980.

[6] Pursuant to the request of the DGIR to the DGTU, a membership check by verification exercise was carried out by DGTU on 16, 17 and 24 August 2000 and 6 November 2000. The applicant subsequently received a letter of 4 December 2000 from the DGIR which stated that the membership check had been carried out and the results revealed that 69.47% of the employees within the scope of representation of the union had become members of the aforesaid union as at 18 March 2000. In view of this, the applicant was advised to accord recognition to the union.

[7] The applicant took the stand that it was not accepting the recommendations of the DGIR and DGTU. The matter was then referred to the Minister for a decision under s 9(5) of the IRA. On 17 March 2001, the applicant received a letter of 12 March 2001 from the DGIR informing the applicant that the Minister had on 7 March 2001 issued an order to the applicant directing it to accord recognition to the union. Hence, this application by the applicant.

[8] As stated earlier, the applicant is seeking an order of certiorari to quash the decision of the Minister made under s 9(5) of the IRA, which directed the applicant to recognise the union. Thus, the issue before this court is whether certiorari would lie against the decision of the Minister on the grounds as advanced by the applicant which are as follows:

(1) The Minister, in arriving at his decision dated 7 March 2001, committed an error of law and acted mechanically by his failure to consider that a membership check by way of verification exercise was not suitable in the circumstances of the matter and the DGTU should have resorted to the membership check by way of secret ballot under the Trade Unions Regulations 1959; and

(2) The Minister, in arriving at his decision dated 7 March 2001, acted in breach of procedural fairness when it failed to provide any reasons to support his decision.

Findings

The First Ground

[9] It is the submission of the applicant that the Minister in arriving at his decision dated 7 March 2001 committed an error of law and acted mechanically by his failure to consider that a membership check by way of verification exercise was not the most suitable in the circumstances of the matter and that the DGTU should have resorted to the membership check by way of secret ballot under the Trade Unions Regulations 1959.

[10] It must be noted that the decision of the Minister here was made under s 9(5) of the IRA. Under the provisions of the IRA, a trade union must satisfy two requirements before it can be accorded with recognition. Firstly, it must satisfy that it is competent to represent the employees of a particular industry under its membership rules and there must be 'similarity in trade, industry and profession' between the trade union and the company. Secondly, it must have sufficient members to represent the employees. (See *Tanjong Jara Sdn Bhd v Minister of Labour and Manpower & Anor* [1987] 1 MLJ 124). The second requirement is commonly known as the 'membership check'. Under the Trade Union Regulations 1959, there are two statutory methods of conducting a membership check. Firstly, by way of secret ballot, and secondly, by way of verification check.

[11] The applicant did not dispute the first requirement. The applicant's complaint was with regard to the second requirement. According to the applicant, the membership check must be done by way of secret ballot, as this is a better mode to ascertain whether the employees of the applicant want to be the members of the union.

[12] The learned Senior Federal Counsel on the other hand submitted that the law gives the DGTU the discretion as to which method is to be used in carrying out the membership check. In this case the DGTU has decided that the membership check would be by way of verification exercise. Thus, he urged this court not to interfere the DGTU's exercise of discretion bearing in mind this is a judicial review.

[13] I am in agreement with the learned Senior Federal Counsel. From the facts of this case it is clear that the applicant had failed to object to the verification exercise even though the DGTU, vide a letter dated 25 July 2000 (Exhibit 'CHH7'), had informed the applicant that a membership verification exercise would be conducted. Thus, the Minister cannot be faulted when he decided to adopt the recommendations of the DGIR and DGTU who had carried out the membership check by verification exercise.

[14] The applicant relied on two cases to support its argument, namely *Senja (M) Sdn Bhd v Minister of Human Resources & Anor* (OM No 25-92-2001) and *Minister of Human Resources & Ors v National Union of Hotel, Bar & Restaurant Workers, Semenanjung Malaysia & another appeal* [1997] 3 MLJ 377. But I am of the view the two cases do not support the applicant's submission. In *Senja's* case the company had requested the DGTU to conduct a secret ballot. However, the DGTU rejected the company's request. But in the present application, the applicant never made any such request to the DGTU as well as did not object when the DGTU informed the applicant that membership verification would be carried out. In the *National Union of Hotel, Bar & Restaurant Workers* case, the Hotel wrote to the DGIR requesting for a secret ballot to be held for the purpose of membership check. Meanwhile the union wrote to the DGTU informing him that it wanted to have a membership verification exercise to ascertain the majority. The DGTU made his decision to adopt the secret ballot method. The union was not happy with the outcome of the secret ballot and

applied to the High Court to quash the Minister's decision. The High Court granted the order of certiorari principally on the ground that the DGTU had not given his reasons for selecting the secret ballot method. The Court of Appeal upheld the High Court decision. In the present case the applicant chose not to object to the membership verification exercise carried out by DGTU until the decision which was adverse to the applicant was reached. To me, for the applicant to complain now is clearly an afterthought.

[15] The law confers the DGTU with the discretion to choose one of the two modes of membership check. In this respect the applicant has not shown as to how the DGTU, in exercising his discretion, is said to have acted in excess or without jurisdiction. Neither was there a tinge of evidence to show the DGIR, the DGTU or the Minister had acted outside the scope of the power conferred by the TUA and the rules made thereunder. Accordingly, I find there is no merit on the applicant first ground of challenge.

The Second Ground

[16] The applicant contends that the decision of the Minister was also flawed because of:

(a) failure to give reasons for his order for recognition;

(b) failure to furnish reasons for the adoption of the recommendation of the DGIR; and

(c) failure to furnish any reasons to justify why the verification method was preferred instead of secret ballot.

[17] To support his argument, learned counsel for the applicant relied on the cases of *Rohana bte Ariffin & Anor v Universiti Sains Malaysia* [1989] 1 MLJ 487, *Hong Leong Equipment Sdn Bhd v Liew Fook Chuan and another appeal* [1996] 1 MLJ 481, *Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-Sama Serbaguna Sungai Gelugor dengan Tanggungan* [1999] 3 MLJ 1 and *Menteri Sumber Manusia v Association of Bank Officers Peninsular Malaysia* [1999] 2 MLJ 337. In response, learned counsel for the second respondent cited the cases of *Joseph Puspam v Menteri Sumber Manusia, Malaysia & Anor* [2001] 4 AMR 4181 and *Minister of Human Resources & Ors v National Union of Hotel, Bar & Restaurant Workers, Semenanjung Malaysia & another appeal* [1997] 3 MLJ 377 to demonstrate that the Minister is not compelled to give his reasons, when making his decision.

[18] With respect, I am in agreement with the contention of learned counsel for the second respondent. In *Joseph Puspam's* case the Court of Appeal held as follows:

> The case of *Hong Leong Equipment Sdn Bhd v Liew Fook Chuan (and another appeal)* [1966] 3 AMR 3181 relied on by the counsel for the appellant doesn't subscribe to the idea that the Minister is compelled to give reason for his decision. Further the Minister's refusal to give any reason for the decision doesn't

nullify the decision. This Court is bound by the decision of its superior court where it has been established that the Minister is not required to give any reason when exercising his discretion under section 20(3) of the Industrial Relations Act 1967, therefore the Court cannot compel the Minister to do so.

[19] In the *National Union of Hotel's* case, the Court held as follows:

> The absence of reasons for a decision where there was no duty to give them couldn't of itself provide any support for the suggested irrationality of the decision. The Judge ought to have asked himself the question whether the Director General of Trade Union decision was unreasonable. Having done so, and if he had given an affirmative answer, then and then only, ought he to have proceeded to consider the materiality or relevance of the failure on the part of the Director General of Trade Union to provide reasons.

[20] Clearly, from the above two cases, the Minister is under no duty to give reasons when making his decision. In other words, the absence of Minister's reasons cannot be a reason for the Court to nullify the Minister's decision. Accordingly, the second ground of challenge by the applicant must also fall.

[21] In the circumstances, the application's application is dismissed with costs.

Applicant's application dismissed with costs.

Reported by AG Kalidas